

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
RAYMOND W. ALEXANDER	:	
for Redetermination of a Deficiency or for Refund of New York State Personal Income Tax under Article 22 of the Tax Law for the Year 1995.	:	DETERMINATION DTA NO. 817963

Petitioner, Raymond W. Alexander, PO Box 20098, New York, New York 10021-0061, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law for the year 1995.

A hearing was held before Frank W. Barrie, Administrative Law Judge, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on April 17, 2001 at 10:30 A.M., with all briefs to be submitted by June 29, 2001, which date began the six-month period for the issuance of this determination. Petitioner appeared *pro se*. The Division of Taxation appeared by Barbara G. Billet, Esq. (Jennifer L. Hink, Esq., of counsel).

ISSUE

Whether the Division of Taxation properly determined that petitioner, in order to exclude his wife's income earned in Massachusetts, must file separately rather than jointly with his spouse.

FINDINGS OF FACT

1. In 1995, petitioner lived in Smithtown on Long Island and earned wages in the amount of \$77,593.99 as a self-described clerk for the City of New York. Petitioner's wife, Alice

Alexander, during 1995, lived in Mt. Washington, in the Berkshire region of Massachusetts, and earned wages as a clerk for the Stockbridge Housing Authority in the amount of \$18,426.01.

2. Petitioner and his wife filed a timely joint New York State personal income tax return for 1995, on which they reported only petitioner's wages from his employer, the City of New York, and not Mrs. Alexander's wages from her Massachusetts employer. Mrs. Alexander filed a Massachusetts resident income tax return for 1995, on which she reported her wages and claimed a refund of \$94.00 based on the difference between Massachusetts income tax due for 1995 of \$888.00 and Massachusetts income tax withheld of \$982.00.

3. The Division of Taxation ("Division") issued a Statement of Proposed Audit Changes dated October 16, 1998 against petitioner and his wife asserting tax due of \$1,996.79 plus penalty and interest for the year at issue. This statement provided the following explanation, in relevant part, as follows:

New York State has an exchange of information agreement with the Internal Revenue Service. The Internal Revenue Service provided us with information reported on your 1995 federal income tax return.

* * *

Information furnished by the Internal Revenue Service . . . indicates that your federal adjusted gross income was \$96,227.00, rather than \$76,272.00, as reported on your New York return.

The information we received from the Internal Revenue Service shows you had taxable wages of \$96,020.00, taxable interest income of \$249.00, taxable dividend income of \$661.00 and taxable refunds of state and local income taxes of \$2,297.00.

4. The Division then issued a Notice of Deficiency dated January 19, 1999 against petitioner and his wife asserting income tax due of \$1,996.79, plus penalty and interest. This notice referenced the Statement of Proposed Audit Changes detailed above.

5. By a Conciliation Order dated April 21, 2000, tax asserted due against petitioner and his wife was reduced from \$1,996.79 to \$1,006.97, and penalty was canceled. The reduction in tax resulted from a recomputation of petitioner's New York State income tax liability for 1995, based upon a change in filing status for petitioner from "married filing joint return" to "married filing separate return." By this changed filing status, only petitioner's income, and not his wife's, was subjected to New York State income tax for 1995.

CONCLUSIONS OF LAW

A. Petitioner accused the Division of "fraud" and "stonewalling" at the hearing. However, his position was not coherent. Most important, he failed to present evidence of any sort that would provide a basis to further adjust the income tax deficiency for 1995, as reduced by the conciliation order dated April 21, 2000. The burden was upon petitioner to prove by clear and convincing evidence that the Division's assertion of tax due was erroneous, and he offered nothing to meet this burden (*see, Bello v. Tax Appeals Tribunal*, 213 AD2d 754, 623 NYS2d 363).

B. Pursuant to Tax Law § 612(a), petitioner and his wife were required to report as their adjusted gross income on their joint New York personal income tax return for 1995 their *federal* adjusted gross income. Consequently, petitioner and his wife were required to include Mrs. Alexander's Massachusetts wages on their joint return. Pursuant to Tax Law § 620, petitioner and his wife were then entitled to claim a credit against their New York income tax liability for *income taxes* paid to Massachusetts on Mrs. Alexander's wages earned in Massachusetts. However, as noted in Finding of Fact "2", petitioner and his wife did not claim a credit for taxes paid to Massachusetts but rather erroneously failed to report Mrs. Alexander's wages from Massachusetts on the joint return. Petitioner's complaint that over the years the Division has

wrongly “count[ed] money from the State of Massachusetts” fails to show an understanding of this aspect of the New York Tax Law (tr., p. 21).

C. As noted in Finding of Fact “5”, the conciliation order reduced tax due for 1995 from \$1,996.79 to \$1,006.97, a reduction of \$989.82. This reduction was based upon a change in filing status for petitioner from married filing *joint* return to married filing *separate* return. In this way, petitioner’s adjusted gross income for New York income tax purposes would not include Mrs. Alexander’s Massachusetts wages. This change in filing status was more beneficial to petitioner than merely allowing petitioner and his wife to claim on a *joint* New York income tax return a credit for taxes paid to Massachusetts, which as noted in Finding of Fact “2” amounted to the lesser amount of \$888.00.

D. In addition, it must be noted that the Division has acted professionally and with patience in responding to petitioner’s anger, which was rooted in his failure to understand the complexities of the Tax Law.

E. The petition of Raymond W. Alexander is denied, and the Notice of Deficiency dated January 19, 1999, as modified by the conciliation order dated April 21, 2000, is sustained.

DATED: Troy, New York
December 6, 2001

/s/ Frank W. Barrie
ADMINISTRATIVE LAW JUDGE